## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

EDNA BROWN ) Claimant )	
VS.	Docket No. 180,764
THE BOEING COMPANY - WICHITA, KS	DOCKET NO. 160,704
Respondent ) AND )	
AETNA CASUALTY & SURETY	
Insurance Carrier ) AND )	
KANSAS WORKERS COMPENSATION FUND	

# ORDER

**ON** the 28th day of July, 1994, the application of the respondent and insurance carrier for review by the Workers Compensation Appeals Board of a Preliminary Hearing Order entered by Administrative Law Judge John D. Clark, dated June 7, 1994, came on for oral argument.

#### **APPEARANCES**

Claimant appeared by and through her attorney, Tom E. Hammond of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Eric K. Kuhn of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through their attorney, J. Philip Davidson of Wichita, Kansas. There were no other appearances.

#### RECORD

The record before the Appeals Board is the same as that considered by the Administrative Law Judge, including the documents filed of record with the Division of Workers Compensation in this docketed matter, the transcript of the Preliminary Hearing

before Administrative Law Judge John D. Clark on January 19, 1994, and the exhibits attached thereto.

## **ISSUES**

The Administrative Law Judge denied respondent's motion to terminate temporary total disability compensation which prompted the respondent to seek this review.

The issues before the Appeals Board are:

- (1) Whether the Appeals Board has jurisdiction to review this matter.
- (2) Whether the claimant is entitled to temporary total disability compensation.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board, for preliminary hearing purposes, makes the following findings of fact and conclusions of law:

(1) In his Order of June 7, 1994, Administrative Law Judge John D. Clark denied respondent's motion to terminate temporary total disability compensation benefits for two reasons: 1) That claimant has sustained her burden to prove she is still totally disabled from gainful employment; and, 2) claimant has not reached maximum medical improvement and is still in need of medical treatment.

The Appeals Board does not have jurisdiction to review a finding of an Administrative Law Judge ordering temporary total disability compensation and medical treatment benefits based upon a factual determination that claimant is still totally disabled and has not reached maximum medical improvement. Here the Administrative Law Judge determined that claimant is entitled to those benefits based upon the evidence presented to date.

The jurisdiction of the Appeals Board to review preliminary hearing matters is limited to those situations which involve one of the disputed issues set forth in K.S.A. 44-534a(a)(2), or where the Administrative Law Judge has otherwise exceeded his or her jurisdiction in granting or denying the relief requested at preliminary hearing.

The Administrative Law Judge has not exceeded his jurisdiction in determining whether claimant is temporarily totally disabled and therefore entitled to benefits. Under the facts presented, the Appeals Board lacks jurisdiction to review that finding.

#### **AWARD**

**WHEREFORE**, it is the finding and decision of the Appeals Board that it is without jurisdiction to review the Preliminary Hearing Order of Administrative Law Judge John D. Clark, dated June 7, 1994, thereby leaving said order in full force and effect.

### IT IS SO ORDERED.

Dated this \_\_\_\_ day of August, 1994.

BOARD MEMBER	
BOARD MEMBER	
DOADD MEMBER	
BOARD MEMBER	

c: Tom E. Hammond, PO Box 47370, Wichita, KS 67201-7370
Eric K. Kuhn, 700 Fourth Financial Center, 100 N. Broadway, Wichita, KS 67202
J. Philip Davidson, 600 Epic Ctr., 300 N. Main, Wichita, KS 67202
John D. Clark, Administrative Law Judge
George Gomez, Director